

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL.)

July 18, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 24, 2005, in which you request information. The Department apologizes for the delay in getting a response to you. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This is a request for a letter ruling on the taxability of services ABC provides to their customers. ABC offers managed network access and related solutions services to customers who seek a private, secure, business extranet network in which to conduct secure business transactions. Below is a brief description of the ABC offerings.

#### **ABC Network - Managed Service**

The ABC Network is a unique, high-powered network that provides a secure global medium for business-to-business information exchange. Through a global standard that assures the highest levels of security and quality, the ABC Network offers connected customers, reliable, multi-vendor extranet and Virtual Private Network (VPN) services. Once ABC obtains a new managed network customer, ABC contacts the customer's local telephone provider, which installs a dedicated data line at the customer's facility. All costs associated with the installation and the monthly recurring charges for this data line are billed directly to ABC by XYZ, not the customer. XYZ charges ABC and collects all state, local and federal taxes due on the installation and monthly recurring charge associated with this data line.

After the data line is installed, ABC sends pre-configured network equipment consisting of a router and an encryption-coding device to the customer via common carrier. This equipment is necessary in order for ABC to provide the customer with the managed network service. The customer merely removes the equipment from the packaging, connects the equipment to the data line and the customer's existing computer system. At this time, the customer has access to ABC's secure and private network.

ABC has no physical location, employees or any sales/service representatives in the State of Illinois. The only physical presence ABC has in Illinois is the network equipment the customers use to access the network. The network equipment remains the property of ABC at all times and is provided free of charge to the customer. However, there is a one-time charge for the configuration of this equipment. In ABC's customer agreement it states, 'all such material and equipment shall be provided to Customer solely on a leased/licensed basis, as applicable.' ABC does not consider this one-time charge as a lease of the network equipment but rather as a charge to cover the engineering time to configure the equipment and network located in STATE. There is no transfer of software or other tangible personal property beyond the network equipment. Currently ABC is collecting state and local sales tax on the entire invoice amount billed to their customers.

The following are examples of specific charges that ABC invoices their customers for which we are requesting guidance. Detail is provided to further explain exactly what is included in each line item charge. Herein are our questions about the application of sales tax on each charge invoiced by ABC. Sample invoices have been included with line items numbered coinciding with the question number.

- **Monthly Fee** This fee is a bundled lump sum fee that is charged for access to the Network, technical phone support, and network connection monitoring. If a customer encounters a problem accessing the Network, ABC has staff available to aid customers, over the phone, in the correction of the problem to restore Network access. If the Network connection is terminated, ABC remotely isolates the cause and ensures proper restoration of the Network connection. These services are all done by staff located out of state via computer terminals linked to ABC's Network. Please keep in mind that this is a bundled lump sum fee where the amount cannot be differentiated by the components that make up this fee.

**Question 1: Is this monthly service fee subject to sales tax that ABC should be collecting from their customers and remitting?**

- **Dial-up Access** - ABC also provides some customers dial-up access to the Network where no equipment or additional data lines are required. The customer simply dials an access number through their existing communication lines that connects them to the ABC Network server.

**Question 2: Is this type of dial-up network access subject to sales tax that ABC should be collecting from their customers and remitting?**

- **Installation of Data Line-** As mentioned above, ABC arranges through XYZ to have a dedicated data line installed at the customer's facility. ABC is billed by XYZ, including all applicable state, local and federal taxes to install this data line. ABC in return invoices their customer a one-time charge to recoup the cost of the installation of the data line.

**Question 3: Since the installation is done by XYZ and all state, local and federal taxes are paid by ABC; is the one-time charge to the customer subject to sales tax that ABC should be collecting from their customers and remitting?**

- **Equipment and Network Configuration-** As mentioned above, network equipment is needed for the customer to access the network. ABC provides this equipment at no cost to the customer. The customer is invoiced a one-time charge for the cost of ABC's out of state engineers to configure this equipment prior to shipment to the customer. ABC asserts that this is not a lease for the equipment since in some cases, depending on the customer, this one-time charge is waived. Furthermore, if the customer cancels ABC's service, the equipment must be returned to ABC or the customer is billed separately for the value of the network equipment. The network equipment remains the property of ABC at all times. ABC also pays sales tax when they purchase this equipment from their supplier.

**Question 4: Is this one-time charge for the configuration of the equipment (which is sometimes waived) subject to sales tax that ABC should be collecting from their customers and remitting?**

**Question 5: If this one-time fee is in fact viewed by the State as a lease of tangible personal property and the fee is waived by ABC, would the State impute a lease charge into the monthly managed service fee referred to in Question 1 above, thus changing the State's response to Question 1's taxability?**

### **ABC Network - CSP**

Access to the ABC Network can also be obtained through a Certified Service Provider (CSP); A customer will contact their CSP (AT&T, Ideal, SBC) to have their circuit installed. The customer pays the CSP directly for the installation, equipment and monthly circuit fee. The equipment provided them is from the CSP and not ABC. If the customer has problems with their circuit they must first contact the CSP and work with them to resolve the problem. The customer will then register with ABC identifying all equipment and their IP address. ABC charges the customer a yearly fee which covers use of the ABC Network and tunneling to our membership. When a customer increases their circuit bandwidth and makes a physical change to the circuit an assessment fee is charged by ABC.

**Question 6: Is the yearly charge subject to sales tax that ABC should be collecting from their customers and remitting?**

**Question 7: Is the assessment charge subject to sales tax that ABC should be collecting from their customers and remitting?**

### **ABC1**

ABC1 is an TYPE service. Though dial-up access, customers can conduct business with one or many trading partners in a reliable, cost-effective and secure manner. ABC is a reseller through the use of COMPANY (a leader in connecting buyers, suppliers and e-Marketplaces for true end-to-end e-Business.) Get2Connect applications. Installation and set-up are done via a website download. There is no equipment involved with this

service. Users receive access to ABC Network mailboxes for storage and forward messaging. ABC charges customers a monthly fee either based upon a flat rate or monthly usage.

**Question 8: Is the monthly fee subject to sales tax that ABC should be collecting from their customers and remitting?**

## **ABC2**

ABC Network trading partners can resolve their IPSec interoperability challenges quickly and cost effectively with the ABC2 service. ABC2 service combines the in-house IPSec expertise of ABC with a standardized hardware offering to eliminate the complexity and resource constraints related to this issue. ABC2 service uses a standardized, single hardware platform: the family of products. As with the Managed Service, an IPSec device is sent to the customer free of charge and remains the property of ABC at all times. There is a one-time charge for the configuration of this equipment. The customer is charged a yearly fee covering usage of the tunnel to its trading partner(s).

**Question 9: Is the yearly fee subject to sales tax that ABC should be collecting from their customers and remitting?**

**Question 10: Is the one-time charge subject to sales tax that ABC should be collecting from their customers and remitting?**

If you have any further questions or need additional information please feel free to contact me. I have attached a separate page with ABC's mailing address and that of ABC's consulting firm, which should be copied on all correspondences relating to this ruling.

## **DEPARTMENT'S RESPONSE:**

Without review of the specific contracts between your company and its various customers, we cannot provide you with specific guidance on those transactions. We are answering your letter request with the understanding that your company is not merely providing Internet access. We hope the general information setout below will assist you in determining your tax liabilities, if any. However, if you are in the business of providing Internet access, you should refer to general information letter ST-04-0229-GIL. The Department's general information letters and regulations may be found on the Department's Internet website under the heading of "Laws/Regs/Rulings."

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Transmission charges that are purchased for resale should be purchased by providing a certificate of resale to the supplier. Gross charges do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges (Section 2(a)(4) of the Act). However, if equipment is sold or leased, Retailers' Occupation Tax or Use Tax, respectively, may be incurred.

If both transmission and data processing services are provided, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c). The statute does not require disaggregation on the customers' invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers' books and records, for audit purposes, such disaggregation need not be shown on the customers' invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed were for telecommunications, then none of the charges would be subject to tax.

Section 15 of the Telecommunications Infrastructure Maintenance Fee Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." See 35 ILCS 635/15(b).

The Department began collecting the Simplified Municipal Telecommunications Tax beginning with bills issued on and after January 1, 2003. The Simplified Municipal Telecommunications Tax is imposed in the same manner and on the same tax base as the State's Telecommunications Excise Tax. Both taxes apply to interstate and intrastate telecommunications.

Under the Use Tax Act, a tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. In other words, the Use Tax applies when tangible personal property is purchased anywhere at retail from a retailer and brought into this State for use. In addition, lessors of tangible personal property used in Illinois would incur Use Tax liability on the cost price of item(s) being leased. See 86 Ill. Adm. Code 130.220.

The Illinois Use Tax provides a credit for taxes paid to other states under certain circumstances. See 86 Ill. Adm. Code 150.310 concerning Exemptions to Avoid Multi-State Taxation. Exempted in subpart (a)(3) is "the use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to this sale, purchase or use of that property, to the extent of the amount of the tax properly due and paid in the other state."

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess

Associate Counsel

EEB:msk